IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
WRIT PETITION NO. 904 (SS) OF 2005

1. Devi Datt, S/o Sri Chunamani working as Beldar,
2. Krisna Datt, S/o Khusal Singh, working as Beldar,
3. Keshav Dutt, S/o Sri Datt Ram working as Beldar,
4. Ishwari Dutt, S/o Bhavdev working as Beldar,
5. Amar Singh, S/o Shivraj Singh, working as Beldar,
6. Gopal Singh, S/o Himmat Singh working as Beldar,
7. Keshar Singh, S/o Chandra Singh working as Beldar,
8. Ram Singh, S/o Laxman Singh working as Beldar,
9. Jagdish Chandra, S/o Tika Ram working as Beldar,
10. Ram Singh, S/o Dan Singh working as Beldar,
11. Umed Singh, S/o Dharam Singh working as Beldar,
12. Khim Singh, S/o Sher Singh working as Beldar,
13. Trilok Singh, S/o Naam Singh working as Beldar,
14. Dinesh Chandra, S/o Nityanand working as Beldar,
15. Jagat Singh, S/o Aan Singh, working as Beldar,
16. Devi Ram, S/o Digar Dev working as Beldar,
17. Mahesh Chandra, S/o Hari Datt working as Beldar,
18. Jayad Singh, S/o Dharm Singh working as Beldar,
19. Tula Ram, S/o Durga Dutt, working as Beldar,
20. Diwan Singh, S/o Mitra Singh working as Beldar,
21. Amar Singh, S/o Joga Singh, working as Beldar,
22. Ratan Singh, S/o Prem Singh working as Beldar,
23. Hayat Singh, S/o Umed Singh, working as Beldar,
24. Prahlad Singh, S/o Jaman Singh, working as Beldar,
25. Ram Singh, S/o Pratap Singh, working as Beldar,
26. Amar Singh, S/o Trilok Singh, working as Beldar,
27. Keshav Dutt, S/o Durga Dutt, working as Beldar,
28. Amar Singh, S/o Umed Singh, working as Beldar,

29. Devi Datt, S/o Ganga Datt working as Beldar,
30. Madan Singh, S/o Keshar Singh working as Beldar,
31. Bachi Singh, S/o Khushal Singh, working as Beldar,
32. Keshav Dutt, S/o Devi Dutt, working as Beldar,
33. Lone Singh, S/o Harak Singh working as Beldar,
34. Diwan Singh, S/o Aan Singh working as Beldar,
35. Kunwar Singh, S/o Madho Singh, working as Beldar,
36. Harinandan, S/o Kunwar Dev working as Beldar,
37. Khimanand, S/o Tika Ram working as Beldar,
38. Chintamani, S/o Hari Datt working as Beldar,
39. Ganga Dutt, S/o Tika Ram working as Mait,
40. Kedar Singh, S/o Nath Singh, working as Mait,
41. Anand Ballabh, S/o Bhima Dutt working as Mait,
42. Madan Mohan Singh, S/o Prem Singh working as Mait,
43. Harish Chandra Tiwari, S/o Sri Krishna working as Beldar,
44. Harish Ram S/o Dhan Ram working as Beldar,

All above mentioned petitioners are working in District Champawat, in P.W.D. in Regular Establishment.

.....Petitioners.

Versus

1. State of Uttaranchal, through the Secretary, Public Works Department, Dehradun.
2. The Engineer in Chief, Public Works Department, District Dehradun.
3. Superintendent Engineer Public Works Department, Champawat.
4. Executive Engineer, Provincial Division, Public Works Department, Champawat.

Dated: 24.02.2006

Hon'ble Rajesh Tandon, J.

Heard Sri S.S. Yadav, learned counsel for the petitioner and learned Standing Counsel for the respondents.

2. By the present writ petition, the petitioners have prayed for a writ of mandamus directing the respondents to pay the salary of the petitioners according to Vth Pay Commission and to fix the revised pay scale.

3. Briefly stated, the petitioners no. 1 to 44 were appointed in the work charge establishment on different date as has been mentioned in paragraph no. 2 of the writ petition, Petitioners no. 1 to 38, 43 and 44 were appointed as Beldar while petitioners no. 39 to 42 were appointed as Mait. The petitioners are working in the department for last 20 years in the work charge establishment in P.W.D. Champawat and their services have been regularized in the year, 1985, 1989 and 1998 respectively.

4. Petitioners were getting Rs. 1,150/-as basic pay in thue work charge establishment, but since the date of regular establishment, the respondents arbitrarily fixed basic pay scale @ Rs. 950/- per month and overlooked the Vth Pay Commission, which came into existence in the year, 1996.

5. The grievance of the petitioners is that the respondents are treating them as fresh appointed employee since the date of regularization of their service.

5. Petitioner have submitted that when they were working in the work charge establishment they were being paid higher salary than they are getting at present, when their services have been regularized and it is their apprehension that this act will affect to the pensionery benefits of the petitioners in the future.

7. The petitioner has also referred the judgment of ***Haryana Vs. Pyara Singh, AIR 1992 SC 2130.*** The relevant observation is quoted below:-

"So far as the work charged employees and casual labour are concerned, the effort must be to regularize them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labour is continued for a fairly long spell-say two or three years- a presumption may arise that there is regular need for his services. In such situation it becomes obligatory for the concerned authority to examine the feasibility of his regularization. While doing so the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court security of tenure is necessary for an employee to give his best to the job."

8. Learned counsel for the petitioners has referred the judgment of the Apex Court in the case of ***State of U.P. Vs Putti Lal reported in 2002D(1) E.L.C. 524 (S.C).*** It was also a case of daily wagers of Forest Department. The Apex Court has held as under:

> *"So far as the State of Uttaranchal is concerned, a scheme for regularization of daily workers has been produced before us which prima facie does not appear to be objectionable excepting the provisions regarding qualification for regularization. Be it stated that the qualification essential for being regularized would be the qualification as was relevant on the date of particular employee was taken in as a daily wager and not the qualification, which is being fixed under the Scheme. The fact that the employees have been allowed to continue for so many years indicates the existence or the necessity for having such posts. But still it would not be open for the court to indicate as to how many posts would be created for the absorption of these daily wage workers. Needless*

to mention that the appropriate authority will consider the case of these daily wagers sympathetically who have discharged the duties for all these years to the satisfaction of their authority concerned. So far as the salary is concerned as we have stated in the case of State of Uttar Pradesh, a daily wager in the State of Uttaranchal would also be entitled to the minimum of the pay scale as is available to his counter parts to in the Government until his services are regularized and he is given regular scale of pay."

9. In this regard the petitioners have filed their representation dated 18.07.2003 (Annexure No. 3 to the writ petition) before the authorities concerned regarding correction of pay fixation and for treating the rendered service in work chare establishment as length of service.

10. In view of the aforesaid facts, a writ of mandamus is issued directing the respondents to pass appropriate orders on the representation of the petitioners regarding payment of salary to them according to Vth pay Commission and fixing the revised pay scale.

11. Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

24.02.2006
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